MONTANA LEGISLATIVE HISTORY

Chapter 276 1979

Bill H 238 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Public Health		
Hearing Date(s)	~~1-22~~ 1-23	✓ C	Hearing Date(s)	2-28	✓ C
	~~1-30~~	C		3-2	✓ C
	1-23	✓ C			C
	1-29	✓ C			C
Date Out		C			

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

HOUSE BILL NO. 238

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT

OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO EMPOWER THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO IMPOSE SANCTIONS ON AND RECOVER PAYMENTS FROM PROVIDERS WHO ENGAGE IN FRAUDULENT, ABUSIVE, OR IMPROPER ACTIVITIES; AMENDING SECTION 53-6-111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-6-111, MCA, is amended to read:

"53-6-111. Department charged with general administration of medical assistance -- adoption of rules to punish fraud. (1) The department of social and rehabilitation services is hereby authorized and empowered to administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in chapter 2 of this title, as amended, and as contemplated by the provisions of Title XIX of the federal Social Security Act.

(2) The department shall adopt rules establishing a system of penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The department shall define by rule those activities which are fraudulent, abusive, or improper.

(3) The penalties or sanctions imposed include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) withholding of payments to offset previous improper payments to a provider;

(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent, abusive, or improper activities;

(d) suspension of participation in the program for a specified period of time; and

(e) permanent termination of participation in the medical assistance program.

(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent, abusive, or improper activities, together with interest at a rate of 6% per annum from the date of such payment.

(5) In all cases in which a penalty or sanction has been imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 1. The department may stay the effect of the penalty or sanction pending the hearing."

-End-

LC 0720/01

HB 238

INTRODUCED BILL

Judiciary COMMITTEE

46th __ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 225	criminal penalty for permitting livestock to enter or remain unlawfully	1/17	Conroy	Monday 22nd	do pass-amend	1/24
HB 226	county attorney may not be appointed counsel for a minor in divorce, etc.	1/17	Conroy	Tuesday 23rd	do pass-amend	1/24
HB 229	include district court judges in county budget law	1/17	Sales	Tuesday 23rd	do pass-amend	1/24
SB 63	misrepresentation of insurance policies	1/17	Anderson	Tuesday 23rd	concurr	1/24
HB 238	impose sanctions on & recover payments from providers & engage in improper activities etc.	1/18	Lund	Tuesday 23rd	pass-amend rereferred 1/31	1/29
HB 242	creating informal contested case proceedings, etc.	1/18	Harper	Wednesday 24th	pass-amended	1/25

HOUSE BILL NO. 238: Representative Lund. This bill was at the request of the Department of Social and Rehabilitation Services. The department does not have any law in state law that allows them to recover. He read the new language at the bottom of page 1.

JIM McCABE: Chief, Program Integrity Bureau. This bill would grant specific authority to impose sanctions and penalties on Medicaid providers who abuse or defraud the Medicaid program. Federal regulations governing the Medicaid program require the state to have procedures for suspending and/or terminating abusive providers. He gave a copy of written testimony. (attached)

CHAD SMITH: Montana Hospital Association. We strongly support the bill even though we have lost a great deal of money by participating in the Medicaid program.

REPRESENTATIVE KEYSER: On page 2, lines 2 and 3, what language do you consider to be fraud and what do you consider to be abusive.

MR. McCABE: Split prescriptions, or a captive audience, such as a nursing home. Or a billing for the wrong service just to get a few dollars more.

REPRESENTATIVE CONROY: Do you still use the service out of Great Falls to do your book work.

MR. McCABE: Yes, at this time we still do.

MR. CONROY: There has been a lot of criticism of the Dykewood Corporation. Are you looking at that problem and trying to remedy the situation.

MR. McCABE: Yes, we have put it up for bid.

MR. CONROY: Why have you delineated the local people from administering this problem.

REPRESENTATIVE SEIFERT: How many employees do you have in the field just on fraudulent cases.

MR. McCABE: I suppose 20% of my time checking on medical providers.

REPRESENTATIVE ROSENTHAL: How much could you recover.

MR. McCABE: On the national scale it is 5%. I have myself recovered about 5 to 10 thousand. I think we need visibility.

JOHN MEREDITH: Attorney. We have no opportunity to raise the percentage figure. He made reference to line 20, in answer to a question raised by Representative Jack Uhde.

Representative Rosenthal asked if there was a procedure for investigating an offender and Mr. McCabe said, depending on what we suspect and try to compare it. There was lengthy discussion about generic substitution.

Representative Daily asked what access do you have to records and Mr. McCabe answered, the provider must have supporting document.s The Department of Revenue has subpoena powers. If it is abuse we handle it but if it is criminal the Department of Revenue would handle it.

MR. McCABE: Discussed drugs and drugstores and the cost of the program, and the many other states that have had the same problem.

REPRESENTATIVE ROTH: Who makes the final determination, and Mr. McCabe said, we outline it in a letter to the provider and have a hearing. If he is dissatisfied with the hearing he can sue us.

There followed discussion about how fraud is investigated. Mr. McCabe stated that mostly it is incidental to another investigation. Most are from a recipient, county welfare office, etc.

REPRESENTATIVE KEYSER: In returning to the language of "fraudulent, abusiveimproper." Can you get an absolute list.

REPRESENTATIVE SEIFERT: What percentage of facilities are being investigated and the answer was 20% of pharmacies and 10% of doctors. In nursing homes we just do spot checking. The PSRO is the agency that handles nursing homes.

REPRESENTATIVE KEMMIS: We have to define very carefully the sanctions. We have to be very sure that you define fraud, abuse, improper, would you look to other states before you throw this up. The answer was yes, by the attorney, California, Illinois and Ohio, for example, but they will not all be definable.

Representative Kemmis asked, have those statutes, the definition, been challenged in court, and the answer was no.

Representative Keyser asked, how many drugstores refuse to participate in the program because of the paperwork. Mr. McCabe answered that there are three in the state.

REPRESENTATIVE CURTISS: Are there federal rules that apply to this type of thing.

MR McCABE: They instruct you to have rules to sanction providers, but no specific rules.

Again, Mr. Keyser asked, could you have a list of rules before we have executive action.

There followed discussion about the suspension of payments to nursing homes. Following this the hearing closed on House Bill No. 238.

SENATE BILL NO. 63: Senator Anderson. This bill is concerned with the misrepresentation of insurance companies. I am an insurance agent in private life. This bill deals with false advertising and misrepresentation. A lot of the things that have happened because of Medicare.

JO DRISCOLL: Chief Deputy, Insurance Commissioners Office. The amendments define more thoroughly. We had some hearings recently on a supplement to Medicare. She went on to discuss life insurance solicitation regulation and the omission of telling someone something in cases, especially with older persons, it is very misleading. They must fully disclose.

There was discussion about misrepresentation, following which the hearing closed on Senate Bill 63.

HOUSE BILL NO. 226: Representative Conroy. In 1975 Montana adopted the Uniform Divorce and and Marriage Act. This bill provides that a County Attorney may not be appointed counsel for a minor in divorce or guardianship proceedings.

TOM HONZEL: Montana County Attorneys Association. This bill is a response to a Supreme Court case in the adoption of children, a guardianship proceeding. 40-4-205, that section refers to the Uniform Divorce Act. In the past the attorneys fees were assessed against the parents. I don't

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 29, 1979

The committee went into executive session following the regular meeting to take action on pending bills, at 10:35 a.m. in room 436 of the Capitol Building. Chairman Scully called the meeting to order. All members were present although Representative Seifert was excused for a hearing in the Senate. He returned later.

HOUSE BILL NO. 238: Representative Keedy moved three amendments. (copy attached)

Representative Lory discussed an amendment last session and wondered if it would be exempt. After some further discussion the question was called and the motion to adopt the amendments carried with the vote unanimous.

Representative Keyser moved "do not pass as amended" and spoke to his motion. He said he is getting quite upset with the growing bureaucracy and felt that the department had all the tools they needed now and should not have any more power. Representative Conroy spoke in opposition to the motion. Representatives Roth, and Curtiss also spoke in opposition to the motion. The motion failed with Representative Keyser the only yes vote.

Representative Conroy moved "do pass as amended" and the motion carried with Representative Keyser voting "no".

HOUSE BILL NO. 248: Representative Keedy moved to amend page 5, line 21. The motion carried. (A copy of all amendments is attached)

Representative Keedy moved to amend page 6, lines 1 through 4 by striking them in their entirety. He spoke to his motion, and there was discussion on the motion. The motion to amend carried with Representatives Eudaily, Keyser and Conroy voting "no".

Representative Keedy moved to amend Page 7, lines 15 through 18 and to strike all of the new language. He spoke to his amendment and Representatives Lory and Keyser spoke in opposition. The motion failed.

Representative Keedy moved to amend Page 7, line 22. There was discussion about the amendment and Mr. Zanto from the Department explained the furlough program and how it operates now, and that it operates the

46th LEGISLATIVE SESSION

COMMITTEE ON Public Health, Welfare & Safety

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
22	1-18-79	1-26-79	2-02-79				1-31-79		
40	1-15-79	1-19-79	1-24-79					1-22-79	
59	1-22-79	1-31-79	2-02-79				1-31-79		
112	2-06-79	2-28-79	3-16-79					3-16-79	
166	2-16-79	3-02-79	3-03-79				3-02-79		
196	2-22-79	3-09-79	3-13-79					3-12-79	
233	2-22-79	3-07-79	3-08-79				3-07-79		
234	2-20-79	3-07-79	3-08-79				3-07-79		
235	2-20-79	3-05-79	3-08-79					3-07-79	
238	2-08-79	2-28-79	3-04-79					3-02-79	
310	2-10-79	3-02-79	3-03-79						3-02-79
316	2-28-79	3-14-79	3-14-79				3-14-79		
342	2-22-79	3-09-79	3-13-79					3-12-79	
463	2-21-79	3-09-79	3-09-79				3-09-79		
505	2-16-79	3-02-79	3-03-79				3-02-79		
571	2-28-79	3-14-79	3-14-79					3-14-79	
578	2-22-79	3-16-79	3-16-79				3-16-79		

...House Bills, and ...olutions.

Chairman Olson asked the Committee members if they have any questions. Senator Rasmussen asked Ms. Williams if she knew the status of the oversight committee bill in the House. Ms. Williams said she did not. Their group is opposed to the oversight committee because they are supporting annual sessions and are not supporting any interim committees. Senator Himsl asked about the need for a financial statement. Representative Ellis said the other departments are willing to cooperate in thi without a fiscal impact. Senator Ryan asked about the feelings of the rest of the interim committee who did not sign the bill. Representative Ellis said the interim committee as a whole supported this concept. He just got the signatures of the ones he found on the House floor. Senator Lensink asked how this is going to be set up. Representative Ellis said the Governor is loaded with the responsibility of it with the cooperation of the six agencies that are named in the bill. They will come up with a plan to provide this service across the state in the smaller communities. Many of these agencies send people in onc a week, and this could be done in cooperation and make it a one-stop service. It should work with the present agencies; not create a new one. The oversight committee bill is in the House Appropriations Committee. It is House Bill 117.

The hearing on House Bill 112 was closed at 1:10 p.m.

CONSIDERATION OF HOUSE BILL 238: House Bill 238 is an act to empower the Department of Social and Rehabilitation Services to impose sanctions on and recover payments from providers who engage in fraudulent, abusive, or improper activities.

Witnesses supporting House Bill 238:

Jimmy McCabe, Department of Social and Rehabilitation S
Burt Annin, Department of Social and Rehabilitation Ser

Representative Lund, sponsor of House Bill 238, was not present at the hearing. Therefore, Chairman Olson asked Jimmy McCabe, Department of SRS, to testify for the bill. See Attac ment "A" for his testimony.

Burt Annin, attorney for the Department of SRS, referred the Committee to the statement of legislative intent. He does not think there is any concern for constitutional questions in Section 4 as indicated in paragraph 1 of the statement of inte

However, he believes there is a problem along this line in Section 5. He thinks that this section has the cart before the horse in that a sanction is imposed before the hearing. In all cases in which a penalty or sanction may be imposed a person is entitled to a hearing. He suggested that the Committee cross out "has been" and insert "may be" on page 2, lines 22 and 23.

Mr. McCabe closed testimony on House Bill 238 by stating that the department feels that this bill would lend legal justification to the department imposing a sanction and would make it very clear that a court challenge is inappropriate. This bill stems from a case in Illinois where a laboratory had been convicted of felony fraud. The lab took the state to court and the case was overturned because the state had no authority to sanction a person from the program. This bill would protect the department from this happening.

Chairman Olson asked the Committee members if they have any questions. Senator Rasmussen asked about the statement on page 4, line 5, which states that "sanctions imposed include but are not limited to." Mr. McCabe said it has been the department's experience that it cannot always spell out 100 percent what sanctions will be imposed. When the department develops the rules to implement this bill, it will spell out as close as possible the reasons for sanction; but it cannot always anticipate all of the needs. Sometimes a compromise sanction is needed. He cited an example where a sanction that would normally have been imposed would have left a community without a druggist. In that case, an alternate sanction was worked out. Senator Ryan said that he thinks that is sweeping the problem under the rug, and the state could still be taken to court. Mr. McCabe confirmed that the state could have been taken to court in that case. Senator Ryan said he thinks it sounds like the state is condoning fraud in certain situations. Senator Himsl asked Mr. Annin about the last sentence in Section 5. Mr. Annin said he thinks that sentence is redundant and could be taken out. Senator Himsl asked what seems to be the constitutional problem in Section 4. Mr. Annin said he doesn't know if that was a misprint. He wasn't able to find the person who wrote the statement of intent, and he doesn't know what the policy is for amending a statement.

The hearing on House Bill 238 was closed at 1:30 p.m.

Senator Rasmussen moved that House Bill 324 BE CONCURRED IN. Senator Ryan said this alcohol program befuddles him. Three years ago they were just drunks. Now all this money has come in, and everyone has flocked to help the poor alcoholic. He thinks this bill was initially intended to talk about money allocations rather than an explanation of the alcohol programs in the state of Montana. Senator Himsl expressed concern about the direction given to the program at Galen. Senator Ryan said some of these things are already being done, so he doesn't think the money part will change. Senator Rasmussen asked what is going to change if this bill passes. Representative Menahan said there has been a lot of money put into alcohol programs. They would like the institution's rules put in black and white. Because of the new monies, there are a lot of people that are clamoring for the money. They have hired a lot of contracted services, and the outlying areas don't want that. They feel the Galen program is successful. Senator Lensink stated that he feels there are some problems on page 3. He doesn't think that he is ready to vote on this. Representative Menahan said that Don Holmes could write a letter to the Committee on this bill. It was basically through these people that the bill was written.

Senator Himsl made a substitute motion that the Committee delay action until it gets more information. He stated that he would like a fiscal note. The substitute motion passed.

ACTION ON HOUSE BILL 238: Senator Himsl moved that the Committee amend the bill on page 2, line 22, by striking "has been" and replacing it with "may be" and further that the last sentence beginning on line 25 and continuing on line 25 on page 2 be deleted. He thinks this sentence is redundant. The motion carried.

Discussion followed on the statement of intent. Chairman Olson ruled that further action will be delayed until the statement of intent is rewritten. Senator Norman was appointed to work with the Department of Social and Rehabilitation Services and Dennis Taylor to draft a statement of intent.

ACTION ON HOUSE BILL 112: Senator Norman asked if the Committee should decide whether it wants to have an oversight committee in the bill. Senator Rasmussen said that Section 5 speaks to this point. House Bill 117 will take care of this problem. Senator Norman expressed a problem with that section in passing a bill when the Committee will not know if there will be an oversight committee or not. Senator Lensink stated that without hearing testimony on the oversight committee he can't make a decision on this. Senator Rasmussen doesn't think this is the heart of the bill. Senator Himsl asked about line 16 on page 2. Mr. Taylor said that is a mistake in the bill and should read House Bill 117. Senator Norman said he thinks the

ROLL CALL

PUBLIC HEALTH COMMITTEE

46th LEGISLATIVE SESSION - - 1979 Date 2-28-79

NAME	PRESENT	ABSENT	EXCUSED
Olson, S. A., Chairman	✓		
Rasmussen, A. T., V. Chr.		✓	
Himsl, Matt V.	✓		
Lensink, Everett R.	✓		
Norman, Bill	✓		
Palmer, Bob			✓
Ryan, Patrick L.	✓		

Each day attach to minutes.

ATTACHMENT "A"

TESTIMONY BEFORE THE SENATE PUBLIC HEALTH WELFARE AND SAFETY COMMITTEE WEDNESDAY, FEBRUARY 28, 1979 AT 12:30 P.M.

HOUSE BILL 238--"AN ACT TO EMPOWER THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO IMPOSE SANCTIONS ON AND RECOVER PAYMENTS FROM PROVIDERS WHO ENGAGE IN FRAUDULENT, ABUSIVE OR IMPROPER ACTIVITIES; AMENDING SECTION 53-6-111, MCA."

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, HOUSE BILL 238 WOULD GRANT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (SRS) SPECIFIC AUTHORITY TO IMPOSE SANCTIONS AND PENALTIES ON MEDICAID PROVIDERS WHO ABUSE OR DEFRAUD THE MEDICAID PROGRAM. FEDERAL REGULATIONS GOVERNING THE MEDICAID PROGRAM REQUIRE THE STATE TO HAVE PROCEDURES FOR SUSPENDING AND/OR TERMINATING ABUSIVE PROVIDERS. PROVIDERS MAY TAKE ADVANTAGE OF THE MEDICAID PROGRAM AND ITS CLIENTS IN A NUMBER OF WAYS SUCH AS, OVERCHARGING FOR GOODS AND SERVICES OR CHARGING FOR UNNECESSARY TREATMENT, GOODS, OR SERVICES. ALTHOUGH ONLY A HANDFUL OF PROVIDERS IN THE STATE ENGAGE IN SUCH ACTIVITIES, WITHOUT SPECIFIC LEGISLATION TO SANCTION THESE ACTIVITIES, AND TO DETER SUCH BEHAVIOR IN THE FUTURE, PAYMENTS FOR FRAUDULENT OR ABUSIVE ACTIONS COULD BE COSTLY TO THE MEDICAID PROGRAM.

BECAUSE THE DEPARTMENT'S AUTHORITY TO SANCTION PROVIDERS HAS BEEN QUESTIONED IN THE PAST, SRS RECOMMENDS THE PASSAGE OF HB 238 IN ORDER TO ELIMINATE CONFUSION CONCERNING THE DEPARTMENT'S OBLIGATION IN REGARD TO PROVIDER FRAUD AND ABUSE AND ALSO TO COMPLY WITH FEDERAL REGULATIONS. WITHOUT THIS LEGISLATION, THE STATE'S AUTHORITY TO SANCTION PROVIDERS COULD BE CHALLENGED IN COURT. IF THE STATE LOST THE CHALLENGE,

MONTANA COULD STAND TO LOSE FEDERAL MATCHING FUNDS FOR THE OPERATION OF THE MEDICAID PROGRAM. LOSS OF THESE FUNDS COULD PROVE DISASTROUS TO THE MEDICAID PROGRAM IN THIS STATE--A PROGRAM THAT WAS DESIGNED TO HELP THE NEEDY OBTAIN HEALTH CARE.

THERE ARE SPECIFIC INSTANCES WHERE THE MEDICAID PROGRAM COULD RUN INTO DIFFICULTY WITHOUT THIS LEGISLATION. FOR EXAMPLE, FEDERAL REGULATIONS REQUIRE SRS TO SUSPEND OR TERMINATE FROM THE MEDICAID PROGRAM ANY PROVIDER WHO HAS ALSO BEEN TERMINATED FROM THE MEDICARE PROGRAM. IF THE STATE FAILS OR IS UNABLE TO DO SO, IT FACES THE LOSS OF FEDERAL FINANCIAL PARTICIPATION IN MEDICAID PAYMENTS TO PROVIDERS WHO HAVE BEEN SUSPENDED OR TERMINATED FROM THE MEDICARE PROGRAM. THAT FEDERAL PARTICIPATION AMOUNTS TO 63 PERCENT OF THE PAYMENTS. IF THE MEDICAID PROGRAM DOES NOT HAVE THE AUTHORITY TO SUSPEND OR TERMINATE THOSE PROVIDERS, THEN WE MUST CONTINUE PAYING THEM. WITHOUT FEDERAL FUNDS, WE WOULD HAVE TO REQUEST ADDITIONAL FUNDS FROM THE STATE'S GENERAL FUND TO PAY THOSE PROVIDERS.

THE AIM OF HB 238 IS TO ALLOW THE DEPARTMENT TO DEFINE BY RULE WHAT SPECIFIC ACTIVITIES IN RELATION TO THE MEDICAL ASSISTANCE PROGRAM ARE FRAUDULENT, ABUSIVE OR IMPROPER AND SUBJECT TO CERTAIN PENALTIES. THIS BILL DELINEATES SOME OF THOSE PENALTIES AND SANCTIONS AND GIVES SRS THE AUTHORITY TO RECOVER FROM A PROVIDER ALL AMOUNTS OF MONEY PAID BY THE MEDICAID PROGRAM AS A RESULT OF FRAUDULENT, ABUSIVE OR IMPROPER ACTIVITIES.

FIVE PENALTIES OR SANCTIONS ARE LISTED. PROPOSED SANCTIONS RANGE FROM:

--REQUIRING ATTENDANCE AT EDUCATIONAL COURSES CONCERNING THE RULES OF THE MEDICAID PROGRAM, TO

--WITHHOLDING FUTURE PAYMENTS TO OFFSET PREVIOUS IMPROPER PAYMENTS, TO

--SUSPENSION OF PAYMENTS TO A PROVIDER PENDING THE RESOLUTION OF A DISPUTE BETWEEN THE PROVIDER AND THE DEPARTMENT REGARDING FRAUDULENT OR ABUSIVE ACTIVITIES, TO

--TEMPORARY SUSPENSION, OR

--PERMANENT TERMINATION FROM THE PROGRAM.

HB 238 ALSO ENTITLES ANY SANCTIONED PROVIDER TO A HEARING ON THE MATTER.

OTHER STATES HAVE MET WITH DIFFICULTIES CONCERNING THE IMPOSITION OF PENALTIES OR SANCTIONS UPON ABUSIVE PROVIDERS. IN RESPONSE, SOME OF THEM HAVE PASSED LEGISLATION SIMILAR TO THAT PROPOSED HERE TODAY. SRS BELIEVES HB 238 IS NECESSARY TO PREVENT THE WASTEFUL USE OF MEDICAID FUNDS, TO DETER POSSIBLE COURT CHALLENGES IN THE FUTURE, AND TO ENABLE THE STATE TO COMPLY WITH FEDERAL REGULATIONS IN ORDER TO ENSURE ESSENTIAL FEDERAL FUNDING FOR THE PROPER OPERATION OF THE MEDICAID PROGRAM.

BEST COPY
AVAILABLE

SENATE Public Health COMMITTEE

BILLS 112, 324 & 238 VISITORS' REGISTER DATE 2-28-91

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Jimmy McCabe	SRS	HB238	✓	
Lisa Williams	League of Women Voters of MT	HB112	✓	
Judith A. Carlson	SRS	HB112	✓	
J. Burt Anglin	SRS/OCA	HB238	-	
Jim Mockler	MT Coalition Against Stroke	112	✓	
[illegible]	CBPP			
[illegible]	MT Coalition Against Stroke	112	✓	
Rob McCracken	CHILDE			
Jan C. Hardy	CHS			
[illegible]	CHS			
[illegible]	[illegible]			
Cindy Kinnaman	Custer Co. School			
[illegible]	[illegible]			
Lisa Smith	"			
Kim Lucas				
Jenna Anderson	"			

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: Jimmy McCabe DATE: 2/28/89

ADDRESS: 2 Ram Court

PHONE: 442-2916

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: HB 238

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ACTION ON HOUSE BILL 505: Senator Lensink moved that House Bill 505 BE CONCURRED IN. Senator Olson asked what this bill does. Senator Lensink said that it says that if medicaid is going to pay the insurance company can't refuse to pay. The taxpayers get off the hook as primary payor. A roll call vote was taken. The motion carred by a vote of four to one. Senator Lensink will carry House Bill 505 on the Senate floor.

ACTION ON HOUSE BILL 166: Senator Himsl moved that House Bill 166 BE CONCURRED IN. He said that he reads this bill to mean that it gives the Department of Health and Environmental Sciences the authority to do what they are already doing. A roll call vote was taken. The motion passed unanimously. Senator Himsl will carry the bill on the Senate floor.

ACTION ON HOUSE BILL 310: Senator Lensink said he has problems with this bill. First of all, he doesn't think any evidence was presented that there is a need for it. He thinks that it is true that the two other groups on the board would be a very excellent public representation. This is a small board, and they pay more for their board fees than medical doctors and optometrists. Senator Ryan said that he had heard there were complaints that were not getting answered, so he was surprised to hear they only received seven complaints last year.

Senator Lensink moved that House Bill 310 BE NOT CONCURRED IN. A roll call vote was taken. The motion carried with a vote of four to one. Senator Rasmussen will carry the bill on the Senate floor.

ACTION ON HOUSE BILL 238 STATEMENT OF INTENT: Dennis Taylor, Legislative Council, presented the Committee members with copies of the subcommittee's amended statement of intent. See Attachment "D." Mr. Taylor said that the entire text of the original statement would be substituted with this statement. Senator Himsl moved that the substituted statement of intent be adopted by this Committee. The motion carried unanimously

ACTION ON HOUSE BILL 238: House Bill 238 was amended by the Committee on February 28, 1979. Senator Olson moved that House Bill 238, as amended, BE CONCURRED IN. A roll call vote was taken. The motion passed unanimously. Senator Norman will carry House Bill 238 on the Senate floor.

ATTACHMENT "D"

STATEMENT OF INTENT RE: HB 238

A statement of intent is required for this bill because it amends Section 53-6-111, MCA to authorize the Department of Social and Rehabilitation Services to adopt rules in Subsections 2 through 5.

Under present law, SRS has express rulemaking authority to administer and supervise the state's medical assistance program under Title 53 of the MCA. There is no express rulemaking authority for the Department to adopt rules establishing penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The Montana Administrative Procedure Act, Section 2-4-102(11)(a), MCA, requires that substantive rules be adopted under expressly delegated authority in order to be valid.

Federal regulations require the state to suspend or terminate from the Medicaid Program any provider who has also been terminated from the Medicare Program or lose federal financial participation in Medicaid payments to those providers. If SRS does not have the authority to suspend or terminate those providers, the state must continue to pay them but without federal funds which presently amount to 63 percent of the payments. Additional funds from the state's general fund would be needed to pay those providers of medical assistance in Montana.

The intent of this bill is to grant to the Department of

Social and Rehabilitation Services express authority to adopt rules establishing penalties and sanctions as enumerated in Subsections 3 through 5 and the flexibility to comply with federal regulations and to adopt additional penalties and sanctions necessary to provide uninterrupted access to medical care and supplies in areas of Montana where alternative sources are unavailable.

First adopted by the SENATE COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY on March 3, 1979.

HOUSE BILL NO. 238

INTRODUCED BY LUND

BY REQUEST OF THE DEPARTMENT

OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO EMPOWER THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO IMPOSE SANCTIONS ON AND RECOVER PAYMENTS FROM PROVIDERS WHO ENGAGE IN FRAUDULENT, ABUSIVE, OR IMPROPER ACTIVITIES; AMENDING SECTION 53-6-111, MCA."

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"53-6-111. Department charged with general administration of medical assistance -- adoption of rules to punish fraud. (1) The department of social and rehabilitation services is hereby authorized and empowered to administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in chapter 2 of this title, as amended, and as contemplated by the provisions of Title XIX of the federal Social Security Act.

(2) The department shall adopt rules establishing a system of penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The department shall define by rule those activities which are fraudulent, abusive, or improper.

(3) The penalties or sanctions imposed include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) withholding of payments to offset previous improper payments to a provider;

(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent, abusive, or improper activities;

(d) suspension of participation in the program for a specified period of time; and

(e) permanent termination of participation in the medical assistance program.

(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent, abusive, or improper activities, together with interest at a THE rate of 6% per annum SET BY 15-30-142 FOR TAX DEFICIENCIES from the date of such payment.

(5) In all cases in which a penalty or sanction has been MAY BE imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6. The department may stay the effect of the penalty or sanction

REFERENCE BILL

pending the hearings."

-End-